

BENJAMIN TYSON.

[To accompany Bill H. R. No. 437.]

MARCH 23, 1860.

Mr. SCHWARTZ, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of Benjamin Tyson, praying to be paid a balance of commissions due him as agent of the Navy Department for the purchase of anthracite coal for the use of the navy, beg leave respectfully to report :

That Benjamin Tyson, on the 22d of May, 1854, received an appointment from the Hon. J. C. Dobbin, then Secretary of the Navy, to purchase anthracite coal for the use of the navy, under the following commission :

NAVY DEPARTMENT, May 22, 1854.

SIR : You are hereby appointed the agent of the Navy Department for the purchase of the anthracite coal for the use of the navy, from time to time, and specially ordered by the department and its bureaus.

Your duty will be to select anthracite coal, under the direction of the department and its bureaus, of the best quality, adapted to the purpose for which it is to be used, *and to ship it to such points as may be indicated.*

You will receive a commission of five per cent. on the aggregate amount of the cost of the coal, its *transportation and freight*, which commission is to cover all your expenses of selecting, purchasing, and *shipping* the coal.

Very respectfully, your obedient servant,

J. C. DOBBIN.

BENJ. TYSON, Esq.,
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Under this commission, Mr. Tyson, as it appears, purchased, from time to time, such coal as was required by the different bureaus of the Navy Department, receiving as his commission five per cent. on the aggregate amount of the cost of the coal, its transportation and freight.

During Mr. Tyson's official term coal was purchased for, and consigned to, all the navy yards and naval stations in the country, and

to the naval storekeepers at Rio de Janeiro, Panama, Valparaiso, Chili, Hong Kong, Shanghai, Callao, Port Louis Mauritius, Cape of Good Hope, and Singapore. All the coal thus purchased was shipped from Philadelphia and New York.

The claim of Mr. Tyson is for his commission of five per cent. on the freight charges on the coal which was shipped to the various points out of the country. The agent in such cases was only paid his commissions on the mere cost of the coal. The commissions on freights were withheld by the Secretary of the Navy, for the reasons urged by him, that the agent did not engage the vessels which carried the coal abroad.

The committee think it is only necessary to refer to the commission under which the agent acted, which was the contract of the Navy Department with him, to discover what duties were required of the agent, and how his compensation was to be made up.

The second paragraph of the commission declares the duties of the agent to be "to select anthracite coal under the direction of the department and its bureaus," or "and to ship it to such points as may be indicated."

The third paragraph fixes the pay which the agent shall receive, to wit: five per cent. on the aggregate amount of the cost of the coal, *its transportation and freight*.

It would be hard to use language more plain and explicit. There is nothing in the instrument to lead any one to suppose that it is made a duty of the agent to engage vessels. The expression is, "*to ship it to such points as may be indicated.*" "*To ship*" never has been understood to mean the charter of vessels. It is defined by *lexicographers* "to put on board of a ship or vessel." It cannot therefore be fairly said that the contract required Mr. Tyson to engage ships.

But it would seem that the practice at the Navy Department was to pay the commission of five per cent. on the cost of transportation of the coal from the mines to the seaboard, and also to the various points to which it was shipped *in the country*, Boston, New York, Key West, &c., although the agent never engaged the vessels for those points. It is difficult to imagine a ground for paying commissions in the one case and refusing them in the other.

The committee believe Mr. Tyson discharged his whole duty when he selected and purchased the coal and put it on board the ship at Philadelphia or New York.

It may be proper to add, that Mr. Tyson, although he continued to act as agent for the department after Mr. Dobbin retired, he did so under the commission before quoted. No change was at any time made in it.

The committee therefore believe that Mr. Tyson's claim, to wit, for six thousand seven hundred and sixty dollars, with interest from December 31, 1857, is entirely just, and they report a bill accordingly.